

CLARK • FOUNTAIN • LA VISTA
PRATHER • KEEN & LITTKY-RUBIN



LEGAL EDGE

SUMMER 2013

DISTRACTED DRIVING DANGERS

NEW EXPERT WITNESS STANDARD BECOMES LAW

SURVIVING FAMILY SUES SUV MANUFACTURER

HONORING LEGAL "SUPERHEROES"

SPINE SURGERY LIABILITY CASE SETTLED

CLARK FOUNTAIN LAUNCHES YOUTUBE CHANNEL

PERSONAL INJURY

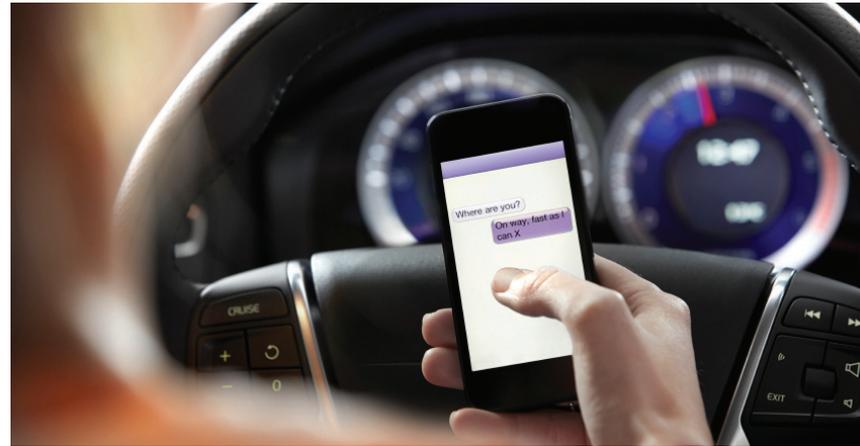
WRONGFUL DEATH

PRODUCTS LIABILITY

MEDICAL MALPRACTICE

BUSINESS LITIGATION

APPELLATE LAW



June 21 marked the first official day of summer, which means the summer holiday travel season is upon us. With some analysts calling for gas prices to fall nationwide during the summer months, expect to see even more drivers hitting the roadway this summer to enjoy vacation time with friends and family.

We urge you never to forget the dangers of distracted driving, which results in countless, preventable tragedies each year. Texting and driving repeatedly finds its way into the headlines as a dangerous and increasingly common hazard. Even major cell phone carriers are acknowledging the problem, unveiling "It Can Wait," a public service campaign against the insidious danger this practice creates. According to AT&T CEO Randall Stephenson, texting while driving makes one 23 times more likely to be involved in an automobile accident.

While we often associate texting and driving with teenagers, a recent survey shows adult texting on the rise. In fact, almost half of all adult drivers admit to texting while driving, despite knowing the risks, with forty percent of commuters actually calling it a habit. Just three years ago, six in ten drivers said they never texted while driving.

Sadly, the growing number of texting and driving-related accidents reported in nationwide statistics has directly translated into an increased number of "distracted driving" cases for our firm. Please do yourself and your family a favor and act safely and responsibly when you get behind the wheel. No message is ever as important as arriving to your destination safely!

Have a wonderful, safe summer.

The Partners of Clark, Fountain, La Vista, Prather, Keen and Littky-Rubin

ATTORNEYS: W. HAMPTON KEEN



INCOMING UNIVERSITY OF FLORIDA FRESHMAN LOSES LIFE DUE TO SUV DESIGN FLAWS

The future looked bright for a smart 19-year old with plans to attend the University of Florida in the fall. Sadly, the incoming freshman was ejected from the SUV he was riding in during a rollover accident, after the vehicle lost control during a lane change.

The SUV's manufacturer claimed the driver of the vehicle was responsible for the loss of control. However, partner W. Hampton Keen contended the death was caused by the vehicle's failure to have electronic stability control as a standard feature and the vehicle's defective rear passenger safety restraint system. Clark Fountain hired experts from across the country to confirm the vehicle's defects.

Based on the firm's extensive past experience with these types of cases and SUV's manufacturer, Keen was able to spare the family from reliving the tragedy by resolving the case for a confidential amount prior to trial.



ATTORNEYS: DONALD R. FOUNTAIN, JR. // NANCY LA VISTA

BOAT MANUFACTURER'S NEGLIGENCE LEADS TO TEEN'S LEG BEING AMPUTATED

As the driver made a sharp left turn in a wakeboarding boat, the teenage passenger sitting in the bow seat of the boat, was ejected into the water. Before his companions' could react, the boat's propeller completely severed one leg at the thigh and lacerated the ankle, Achilles' tendon and two toes of the other leg. Due to the quick thinking of his companions, the young man survived.

His parents sought Clark Fountain's help, believing the official investigation of the accident had been rushed. Marine engineers hired by attorneys Donald R. Fountain and Nancy La Vista performed testing and determined that the boat could execute 180 degree or even 360 degree turns while going 45 miles per hour in a radius of less than 20 feet, due to the craft's unique design and steering system. During these turns, the vessel produced acceleration forces greater than those experienced on most roller coasters.

Depositions revealed that the boat's manufacturer insisted its boats be able to "turn on a dime and give change" to provide a thrill to consumers. In fact, the boat's manual congratulated the buyer for purchasing a high performance boat capable of "extreme maneuvers". What's shocking is that nothing was done to make the boat safer, even though four members of the company's design and management team had personally experienced ejections during high-speed turns. Because the evidence demonstrated gross and careless disregard for the safety of others, Clark Fountain successfully asked the trial judge to allow them to assert punitive damages. At that point, the boat manufacturer agreed to a confidential resolution of the case.

LEGAL ALERT

NEW EXPERT WITNESS STANDARD BECOMES LAW IN FLORIDA

In another insidious effort to pass "tort reform," the Florida Legislature passed HB 7015, a bill changing how Florida courts address the admissibility of expert testimony. Governor Rick Scott signed the bill earlier this month. While the law appears esoteric and hyper-technical, average Floridians should understand it is another step chipping away at the rights of victims hurt by the negligence of others.

"*Daubert v. Merill Dow Pharmaceuticals, Inc.*" and "*Frye v. United States*" are cases that embody two approaches for guiding trial judges when they rule whether purportedly "scientific" evidence may come before a jury. For years Florida followed the *Frye* standard, but now joins a growing list of states to switch to the *Daubert* standard.

Statistics show *Daubert* favors parties who defend against negligence actions. *Daubert* emboldens judges to scrutinize scientific evidence more closely, which inevitably helps dismantle victims' ability to prove their cases, especially in complex medical malpractice, product liability and toxic torts cases, where the disputes turn on scientific evidence. The flexibility of *Daubert* gives judges' great power to make judgments regarding the merits of the evidence, not just its admissibility. That in turn results in the exclusion of expert testimony, which often leads to the legal termination of a victim's case long before he or she gets to present it to a jury.

Despite the change in the legal standard for expert witnesses, our legal team is prepared. For years our attorneys have tried cases in Federal Court and numerous other states where *Daubert* has already been implemented.

DAVID C. PRATHER HONORED BY PALM BEACH COUNTY JUSTICE ASSOCIATION



The Palm Beach County Justice Association, which represents over 450 trial attorneys and paralegals, celebrated their 25th Anniversary with a grand gala at Old Marsh Golf Club. Attorney David C. Prather was honored as one of the former PBCJA presidents. He joined the Association as a board member in 1998, became Secretary in 2002, Treasurer in 2003, President-Elect in 2004 and President in 2005. Timothy J. Murphy, a lawyer with the firm, currently sits on the PBJCA Board.

ATTORNEY: W. HAMPTON KEEN // POORAD RAZAVI



SURVIVING FAMILY SUES SUV MANUFACTURER OVER PREVENTABLE ACCIDENT

Two family members tragically lost their lives after their SUV lost control and rolled over on the way home from a birthday celebration. A third family friend also suffered severe orthopedic injuries because of the rollover. Although the police report blamed the driver of the vehicle for the accident, the family did not believe this was true, and hired attorneys W. Hampton Keen and Poorad Razavi to investigate the accident.

The firm's prior experience involving this model of SUV suggested that the vehicle's poor handling ability, and lack of crashworthiness during a foreseeable accident, may have caused the tragedy. Keen and Razavi ultimately contended these defects were major factors in the accident when filing the lawsuit against the vehicle manufacturer. Additionally, he argued one of the vehicle's component parts failed during the accident, rendering it even more difficult to control the SUV.

Keen & Razavi resolved the case against the manufacturer for a confidential amount early in the litigation. The surviving family members were grateful that the firm had helped them to achieve justice by holding the vehicle manufacturer accountable.



HEALTH ALERT: MEDICAL MALPRACTICE/WRONGFUL DEATH CASE

Widow Alleges Medical Negligence in Husband's Death Following Surgery, Confidential Settlement on Behalf of the Surviving Spouse

A widow alleged her husband's healthcare providers overdosed him with narcotics after surgery. The overdose caused respiratory arrest which progressed to a cardiac arrest. Although successfully resuscitated, the resulting anoxic brain injury necessitated the decision to discontinue life support.

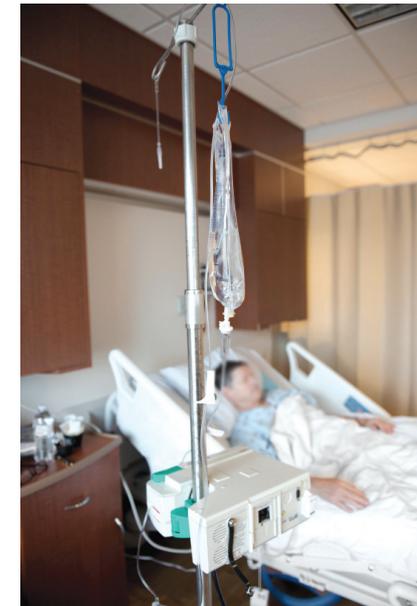
NOTE: Of critical importance to persons with myotonic dystrophy: According to an expert in this area, persons with myotonic dystrophy are much more susceptible to adverse side effects with narcotics, and should not receive that class of drug at all. If the use is unavoidable, narcotics should be used with extreme caution and under close patient monitoring.

ATTORNEYS: NANCY LA VISTA // TIMOTHY J. MURPHY



CONFIDENTIAL SETTLEMENT FOR PATIENT LEFT UNTURNED IN HOSPITAL

Attorneys Nancy La Vista and Timothy J. Murphy helped obtain a confidential settlement for a hospital patient who had horrific bedsores because of negligence by the staff. During the investigation of the claim, Clark Fountain learned that hospital personnel failed to regularly turn the patient over, as each believed someone else had attended to the patient. As a result the man ended up on his back 24-hours a day for several days and developed the sores.



If you are in a hospital or nursing facility, and cannot turn yourself, medical staff should turn you approximately every two hours to prevent pressure sores and deep tissue injury from occurring. Without proper medical attention, such injuries can progress to open wounds. The areas most likely to be affected include the sacrum, a triangular bone at the base of the spine, and the heels. However all bony areas are at risk for developing pressure sores. Because Medicare has deemed pressure sores preventable, it may deny payment for treatment related to bedsores.

COMMUNITY CONNECTIONS



CLARK FOUNTAIN EMPLOYEES GATHER FOR A DAY IN THE SUN

It's not often you get to see our staff without a suit or professional attire, but our annual company picnic is one of those exceptions. On April 6, 2013, the entire firm and their families joined for a fun-filled day of face painting, games and lots of delicious BBQ at Loggerhead Park in Juno Beach. There was even an egg tossing contest!

Super Lawyers

ALL SIX CLARK FOUNTAIN PARTNERS RECOGNIZED AS 2013 "SUPER LAWYERS"

The six named partners at Clark, Fountain, La Vista, Prather, Keen & Littky-Rubin have been recognized as Florida Super Lawyers for 2013. Only five percent of attorneys in the state received this honor. In addition, partners Nancy La Vista and Julie H. Littky-Rubin both ranked amongst the Top 50 female attorneys in the state of Florida, and among just 7 in Palm Beach County. Attorneys Timothy J. Murphy and Cyrus S. Niakan have also been recognized by Super Lawyers as Rising Stars. Just 2.5 percent of eligible Florida attorneys carry this privileged distinction.

ATTORNEYS: MARK W. CLARK // JULIE H. LITTKY-RUBIN // POORAD RAZAVI

WRONGFUL DEATH CASE RESULTS IN MULTI-MILLION DOLLAR SETTLEMENT AGAINST DISTRACTED DRIVER'S CORPORATE EMPLOYER



Attorneys **Mark W. Clark**, **Julie H. Littky-Rubin** and **Poorad Razavi** represented the Personal Representative of the Estate of a man who lost his life because of injuries suffered in a violent intersection collision due to a distracted driver's use of a cell phone. The decedent was survived by his loving wife and two daughters. During the litigation, the trial team established that the defendant driver's use of a cell phone contributed to the crash. In addition, the team established that the defendant driver's cell phone use violated the Fleet policies and procedures of the driver's corporate employer.

Shortly before trial, the trial team was successful in reaching a confidential multi-million dollar settlement with the defendant driver's corporate employers shortly before trial. While the surviving family members will never get their husband and father back, the significant amount of the settlement recognizes, to some extent, the severity of their loss.



**MEET: FRANK MARKETTI/
CONTROLLER**

Native Pennsylvanian **Frank Marketti** joined Clark, Fountain, La Vista, Prather, Keen and Littky-Rubin in January 2013. Besides his sunny disposition, Frank brings with him more than 20 years of accounting experience. He graduated Cum Laude from Northwood University with a bachelor's degree in accounting, and will earn his M.B.A. in accounting later this year.

Frank's professional accomplishments include streamlining accounting department workflow and procedural processes. He has worked with CPA firms and has led accounting departments in both law firm and corporate settings.

Frank is also an accomplished musician, and is pursuing classical training on the piano. The firm is fortunate to have Frank on board and looks forward to having him at its financial helm for many years to come.

HONORING THE LEGAL AID SOCIETY'S "SUPERHEROES"



Attorneys may not be superheroes, but it's clear they have an immeasurable impact on their communities. We believe it is the vital time and resources devoted to their pro-bono work that ensures the principle of "justice for all" holds true. The Legal Aid Society of Palm Beach County recently honored their volunteer efforts at its annual fundraiser. This year's theme was Superheroes: *Fighting for Justice, Saving Lives*. **W. Hampton Keen**, a member of the Legal Aid Society's Board of Directors, with his wife Joette, has served as co-chair of this event for the last two years.

The dinner raises critically needed funds to support Legal Aid's mission of providing high quality, civil legal services, free of charge, to the needy of Palm Beach County to ensure that no individual, child or family is left without a voice in our justice system.

ATTORNEYS: MARK W. CLARK

SPINE SURGERY CASE SETTLES FOR ONE MILLION DOLLARS AFTER LIABILITY INITIALLY DENIED



Mark W. Clark was retained as co-counsel to work with a local attorney in a complex Federal Court motor vehicle accident case in which the defendant initially denied liability for the accident. Because the defendant steadfastly denied responsibility for causing the accident, the case required an extensive accident reconstruction to establish fault.

Following the accident, the Plaintiff was treated for injuries to his cervical and lumbar spine for which he underwent spinal surgery. The defendant vigorously contested the extent of Plaintiff's injuries and hired a neurosurgeon that testified the surgeries Plaintiff underwent were unrelated to the accident in question. The cause was litigated extensively in Federal Court with the U.S. Attorney. However, after the Plaintiff's accident reconstructionist and medical experts testified, the defendant ultimately accepted responsibility and agreed to settle the case for one million dollars [\$1,000,000.00].



ATTORNEYS: DAVID C. PRATHER // CYRUS NIAKAN

JURY AWARDS \$1.64 MILLION TO CLARK FOUNTAIN CLIENT IN CONTESTED CRASH CASE



In March 2006, Laurie Suquet of Boca Raton, Fla. was making a U-turn on Southern Boulevard in West Palm Beach when she was violently T-boned by a roll-off dump truck operated by Ricky Lee Mann. Suquet sustained multiple rib fractures, and first responders used the Jaws of Life to extricate her from her vehicle. She did not complain of any lower back pain until five months later. Ultimately she underwent a 2-level lumbar spine fusion surgery and had a spinal cord stimulator implanted in her lower back.

Attorneys **David C. Prather** and **Cyrus S. Niakan** took the case to trial, where the defense not only vociferously argued the accident was Ms. Suquet's fault, but also argued that the accident did not cause her suffering and injuries. The defense claimed Suquet violated Mann's right of way, and her lower back condition was the result of pre-existing degeneration in her back.

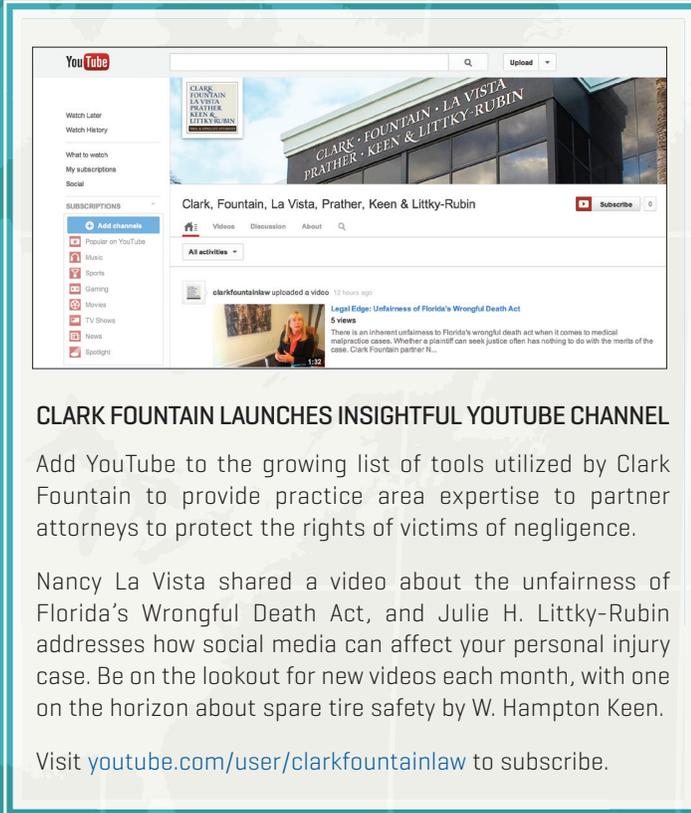
After sifting through three weeks of evidence, the jury determined that Mann operated his vehicle in a negligent manner. They also found that both he and Ms. Suquet bore some responsibility for causing the accident. The jurors then returned a verdict for Ms. Suquet for approximately \$1.64 million to compensate her for her injuries.



THREE CLARK FOUNTAIN PARTNERS HONORED AS LEGAL ELITE

For the third consecutive year, firm partners **David C. Prather**, **W. Hampton Keen** and **Julie H. Littky-Rubin** were named to Florida Trend magazine's *Legal Elite*™. Only 1,228 of the over 90,000 attorneys licensed in Florida were named to 2013's 10th anniversary edition. Attorney **Poorad Razavi** was also named an *Up and Coming* attorney by Florida Trend. Less than two percent of eligible Florida attorneys under the age of 40 received this honor.

VISIT OUR YOUTUBE CHANNEL



CLARK FOUNTAIN LAUNCHES INSIGHTFUL YOUTUBE CHANNEL

Add YouTube to the growing list of tools utilized by Clark Fountain to provide practice area expertise to partner attorneys to protect the rights of victims of negligence.

Nancy La Vista shared a video about the unfairness of Florida's Wrongful Death Act, and Julie H. Littky-Rubin addresses how social media can affect your personal injury case. Be on the lookout for new videos each month, with one on the horizon about spare tire safety by W. Hampton Keen.

Visit youtube.com/user/clarkfountainlaw to subscribe.

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